ICO Global, opposes a "rigid reciprocity approach"[54] but states that "[i]n determining whether to allow a foreign satellite to have access to the U.S., it is appropriate to examine the [foreign] markets that the foreign satellite serves. . . ."[55]

D. The Global ECO-Sat Test Does Not Discriminate Against ICO Global

ICO Global maintains that the proposed global ECO-Sat test for MSS discriminates against it, in favor of U.S.-licensed Big LEO MSS systems.[56] While equal standards should apply to all Big LEO MSS systems to the extent the systems are similarly-situated, ICO Global is not a U.S.-licensed system and ICO Global has extensive national government ownership that the U.S.-licensed Big LEOs do not have. Accordingly, the ECO-Sat test does not discriminate against ICO Global.

It is appropriate for the Commission to apply a different earth station licensing regime to ICO Global -- as a non-U.S.-licensed satellite system -- than it would apply to a U.S.-licensed satellite system. Because non-U.S.-licensed systems are not subject to the detailed application and licensing requirements for U.S. space system licenses[57] or to the conditions in such licenses, the Commission has far less control over the activities of a non-U.S.-licensed satellite system than over the activities of a U.S.-licensed satellite system. The Commission made this point in the Foreign Carrier Entry Order, in contrasting its "ability to address competitive concerns with

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[54] Hughes Comments at 8. The Hughes Comments are filed on behalf of Hughes companies other than Hughes Telecommunications and Space, but the comments state that the interests of Hughes include the investment of Hughes Telecommunications and Space in ICO Global. Id. at 4.

[55] Id. at 12 ("In addition to examining the openness of the foreign satellite's home market, the Commission should analyze each of the route markets . . . that the foreign-licensed satellite proposes to serve from the U.S.-licensed earth station.").

[56] ICO Global Comments at 28-32.

[57] Compare 47 C.F.R. § 25.114 (space system license application requirements) with 47 C.F.R. § 25.130 (earth station license application requirements).

traditional safeguards" where a U.S. company invests in a foreign carrier, with the absence of "effective means to guard against anticompetitive conduct made possible by a foreign carrier's control over [a] foreign bottleneck when the foreign carrier invests in a U.S. carrier."[58/]

ICO Global is not barred from seeking treatment as a U.S.-licensed satellite system by applying for a space system license from the Commission. It is somewhat disingenuous for ICO Global to complain of discrimination, when it has chosen to seek a space system license under the relaxed licensing regime of the United Kingdom and to register as a corporation under the permissive corporate laws of the Cayman Islands.[59/]

Furthermore, ICO Global has far greater influence with national telecommunications regulators around the world than do Iridium, Globalstar, or Odyssey. Nearly all of the investors in ICO Global are national telecommunications regulators and/or government-owned service providers.[60/] The U.S. General Accounting Office ("GAO") stated in a recent report:

58/ Foreign Carrier Entry Order, 11 FCC Rcd at 3913.

59/ See Amendment to the Application of COMSAT Corporation, FCC File No. 106-SAT-MISC-95 (July 11, 1995) (attaching documents reincorporating ICO Global in the Cayman Islands).

60/ The investors in ICO Global, with the exception of Hughes Electronics Corp., the builder of I-CO Global's satellites, are the Signatories of Inmarsat. See ICO Annual Report 1995; U.S. General Accounting Office, Competitive Impact of Restructuring the International Satellite Organizations at 11 n.14 (July 1996) (Report to the Chairman, Committee on Commerce, House of Representatives) ("GAO Report") (Hughes is only external investor in ICO Global as of mid-June 1996). 73 of the 78 Signatories of Inmarsat are national telecommunications regulators and/or government-owned service providers. See Inmarsat Member States, Signatories, Investment Shares and Council Membership, Inmarsat Doc. ASSEMBLY/11/1/ADD/1, Revised Annex IV (Jan. 23, 1996). The only Inmarsat Signatories that do not have any government ownership are those from Canada, Chile, New Zealand, the United Kingdom (where the government does hold a "golden share" permitting it to veto action of the Inmarsat Signatory, British Telecom), and the United States.

> Inmarsat and those signatories that chose to invest directly in ICO hold a majority interest and thus have a significant vested interest in the organization's financial success because they share in ICO's profits. . . . Inmarsat's signatories are typically the government authorities or dominant telecommunications providers that control or influence access to their domestic telecommunications markets.[61/]

Furthermore, the charts that are appended to ICO Global's comments on the "spheres of influence" of the Big LEO MSS systems obscure ICO Global's influence in two important respects.[62/] First, these charts ignore the influence of ICO Global in the numerous home countries of Inmarsat Signatories that have an indirect ownership interest in ICO Global through Inmarsat.[63/] By contrast, ICO Global's 1995 annual report identifies these indirect investors through Inmarsat in a color chart.[64/] Second, the "spheres of influence" of the U.S.-licensed Big LEOs that ICO Global identifies are generally based on agreements with non-governmental investors or service providers in the countries in question. These relationships produce far less "influence" than those with the governmental entities who comprise the majority of ICO Global ownership.

61/ GAO Report at 11.

62/ See ICO Global Comments at Exhibit A.

63/ Inmarsat has guaranteed voting rights of 15 percent in ICO Global, and owns 1.5 million Ordinary Shares and 700,000 B Shares (which are convertible into Ordinary Shares), totaling 15.7% of initial ICO Global shares. See ICO Global Comments at 43 n.66; Application of COMSAT Corporation at 17-18, Application of COMSAT Corporation for Authority to Participate in the Procurement of Facilities of the I-CO Global Communications Limited System, FCC File No. 106-SAT-MISC-95 (May 1, 1995). For example, the indirect ownership interest, through Inmarsat, of British Telecom in ICO Global amounts to $14 million, or roughly one percent of the company.

64/ ICO Annual Report 1995 at 16.

E. The Relaxed Market Entry Tests For The Intergovernmental Satellite Organizations Proposed By COMSAT And Intelsat Would Extend The IGOs' Monopoly Privileges

Numerous commenters in DISCO-II identify significant competitive risks posed by the intergovernmental privileges and market power of the intergovernmental satellite organizations ("IGOs") -- Intelsat and Inmarsat.[65] Not surprisingly, COMSAT and Intelsat disagree. They seek a market entry test for the IGOs based upon the Commission's proposed alternative of "a much less structured standard that focuses directly on the competitive consequences of an IGO providing domestic service within the United States."[66] Moreover, COMSAT argues that this same "effect on competition" test should apply to affiliates, subsidiaries, and successors of the IGOs, and that the Commission's authorization of IGO services should automatically transfer to these affiliates, subsidiaries, and successors.[67] These proposals, taken together, would significantly extend the monopoly privileges and market power that the IGOs currently enjoy.

The Commission itself recognizes that the "effect on competition" test "might not provide sufficient guidance to interested parties."[68] This problem is highlighted by COMSAT's comments, which demonstrate the potential for failure of the "effect on competition" test to address the global market power of the IGOs. COMSAT

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[65] See Motorola and Iridium Comments at 40-44; TRW Comments at 18-26 (advocating an elevated standard for market entry by IGOs); Loral Comments at 26-28; AT&T Comments at 14-17; Comments of Lockheed Martin Corporation at 13-14; GE Comments at 10-12; ORBCOMM Comments at 2-8; Comments of American Mobile Satellite Corporation ("AMSC Comments") at 5-6; PanAmSat Comments at 5-6; Orion Comments at 12-16; Columbia Comments at 21-25; HBO Comments at 20-21.

[66] DISCO-II NPRM ¶ 68; COMSAT Comments at 12-20; Comments of Intelsat ("Intelsat Comments") at 7-8.

[67] COMSAT Comments at 30-33.

[68] DISCO-II NPRM ¶ 68.

maintains that competitive effects of IGO entry to the U.S. market should be judged only in terms of COMSAT's market power and not the IGO's market power.[69] In the case of Inmarsat, this argument ignores the fact that Inmarsat is a monopoly provider of global MSS, that it has access to very large global spectrum resources, that it is affiliated with ICO Global, and that it has very substantial influence with the national telecommunications regulators and monopoly service providers who are its owners. Accordingly, the market entry test applicable to Inmarsat[70] should not be a poorly-defined "effect on competition" test, but rather the same global ECO-Sat test that is applicable to other non-U.S.-licensed providers of global MSS services.[71]

Furthermore, COMSAT's suggestion that IGO service authorizations should transfer automatically to affiliates, subsidiaries, and successors of the IGOs contravenes the important principle that "if IGOs are to provide services in competitive markets, **they cannot be permitted to leverage the benefits of their**

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[69] COMSAT Comments at 12-20. In a related argument, COMSAT argues that the Commission should find COMSAT's "home market" to be the United States in evaluating market entry by Intelsat and Inmarsat. Id. at 25-27. This argument diverts attention from the global market power of the IGOs by misapplying the Commission's proposed ECO-Sat test, which focuses on the markets to which the non-U.S.-licensed satellite system provides service, not on the "home market" of an individual wholesaler of that system's services.

[70] As discussed in the initial comments of Motorola and Iridium, the global ECO-Sat test should apply both to Inmarsat domestic services and to the non-maritime international services that are not mandated by the Maritime Satellite Act, and should apply to COMSAT's domestic Inmarsat service and earth station applications now pending before the Commission. See Motorola and Iridium Comments at 42-44.

[71] COMSAT (and ICO Global) agree that the same U.S. market entry test should apply to all non-U.S.-licensed MSS systems -- although they disagree with most other commenters as to the appropriate test. See COMSAT Comments at 12-20, 27-29 (supporting application of "effect on competition" test to all non-U.S.-licensed MSS systems); ICO Global comments at 45 (supporting "treat[ment] [of] IGO affiliates like any other non-U.S.-licensed satellite system").

intergovernmental status to unfairly distort competition."[72] Several circumstances in the global MSS market make it plain that the Commission must not accept COMSAT's suggestion:

- other than Inmarsat itself, the only non-U.S.-licensed GMPCS system under development is ICO Global, a commercial affiliate of Inmarsat.
- the Executive Branch has maintained that ICO Global and any privatized successor of Inmarsat should be an ordinary commercial entity[73]; and
- Inmarsat and ICO Global have expressed long term interest in merging ICO Global with a successor of Inmarsat.[74]

In view of these circumstances, failure to apply the global ECO-Sat test to affiliates, subsidiaries, and successors of Inmarsat will be likely to lead to a global MSS market in which competition is distorted by the continuing effects of the intergovernmental monopoly privileges of Inmarsat.

In one respect, however, Motorola and Iridium agree that the "effect on competition" test is relevant to U.S. market entry by the IGOs and their affiliates (with ownership and commercial ties to the IGO) and successors (that retain

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[72] DISCO-II NPRM ¶ 71 (emphasis added); see also id. ¶ 73.

[73] See, e.g., Statement by the Representative of the Party of the United States of America, Inmarsat Doc. ASSEMBLY/11/23, Annex XIII (March 6, 1996) (Inmarsat successor).

[74] See Interim Report of the Intersessional Working Group (IWG) to the Inmarsat Assembly, Inmarsat Doc. ASSEMBLY/11/3, at 5 (Jan. 15, 1996) (indicating "the possibility of convergence between I-CO and Inmarsat in the long term"); see also Report of the Tenth (Extraordinary) Session of the Inmarsat Assembly, Inmarsat Doc. ASSEMBLY/10/18, at A31 (Dec. 13, 1994) (requesting a report "relating to the future structure of Inmarsat, taking into account the value of long term linkages with the Inmarsat-P Affiliate [I-CO Global], and the possibility of convergence between the two Organizations in the long term").

intergovernmental status or privileges or "global dominance"[75]). In its recent report, the GAO identified a number of advantages that flow to the IGOs from their ownership structures, privileges and immunities, and ready access to international capital markets.[76] The effects on competition in the United States of the government ownership, intergovernmental privileges and market power of the IGOs (and their affiliates and successors) should be an important, and separate, public interest factor in evaluating all space system, service and earth station applications to use the space segment of these entities for service in the United States.

IV. CERTAIN OTHER ISSUES RAISED BY THE COMMENTERS IN DISCO-II SHOULD BE ADDRESSED BY THE COMMISSION

This section addresses three miscellaneous issues raised by the commenters in DISCO-II: (1) the requirement of licensing of MSS handsets, (2) the application of U.S. technical requirements to non-U.S.-licensed satellite systems, and (3) foreign administration findings of scarcity of spectrum as a public interest factor.

A. COMSAT Is Incorrect That The Commission Does Not Propose To Require Licenses For Handsets Of Non-U.S.-Licensed MSS Systems

In a footnote to its comments, COMSAT makes the surprising assertion that "[t]he DISCO-II Notice is silent with respect to the regulatory treatment of mobile earth stations used for such services as MSS, presumably because the FCC recognizes that licensing such terminals would be wildly impractical."[77] This statement is just wrong. The DISCO-II NPRM explicitly states:

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[75] DISCO-II NPRM ¶ 68.

[76] GAO Report at 4-5.

[77] COMSAT Comments at 34 n.57.

> Under our proposal, any earth station user or operator in the United States that wishes to send or receive transmissions over a non-U.S. satellite must apply for and receive a Title III license to communicate with the non-U.S. satellite.[78/]

There is no indication that this rulemaking proceeding will somehow exempt non-U.S.-licensed satellite systems from the requirements in the Commission's regulations for blanket licensing of mobile MSS earth stations.[79/] In fact, the suggestion in COMSAT's footnote, if true, would mean that non-U.S.-licensed Big LEO MSS systems could easily avoid all U.S. licensing obligations, because the Commission does propose to exempt such systems from U.S. space station licensing[80/] and because a GMPCS system can operate without a fixed gateway earth station in each country.[81/] In order to avoid any future misunderstanding, the Commission should make clear that licensing of earth stations under DISCO-II covers licensing of mobile MSS earth stations (including handsets).

B. The Commission Should Apply U.S. Technical Standards To Non-U.S.-Licensed Satellite Systems, Except Where Appropriate Waivers Are Granted

While many DISCO-II commenters support the Commission's proposal to subject non-U.S.-licensed satellite systems to U.S. technical requirements,[82/] other

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78/ DISCO-II NPRM ¶ 15 (emphasis added).

79/ See, e.g., 47 C.F.R. § 25.115(d) (blanket licensing of 1.6/2.4 GHz (Big LEO) and non-voice, non-geostationary (Little LEO) MSS earth stations).

80/ DISCO-II NPRM ¶ 14.

81/ See ICO Annual Report at 6 (ICO Global system will have 12 "Satellite Access Nodes"); Motorola and Iridium Comments at 9 (IRIDIUM® System gateways will be located initially in 10-12 countries and ultimately in approximately 24 countries).

82/ See Motorola and Iridium Comments at 38; PanAmSat Comments at 4; AMSC Comments at 6-7; AT&T Comments at 13-14; MCI Comments at 24; HBO Comments at

(continued ...)

commenters oppose this proposal on the grounds that these standards may be excessively burdensome for non-U.S.-licensed systems.[83] The Commission should conclude that all technical standards in Part 25 of its regulations are applicable to non-U.S.-licensed satellite systems, except where the Commission waives the requirements as in the public interest.[84] The Commission should carefully consider appropriate waivers of technical requirements that are in fact inappropriately burdensome for non-U.S.-licensed satellite systems, to the extent the waivers do not result in harmful interference or reduction in competition. Otherwise, the Commission should apply U.S. technical requirements equally to all satellite systems providing service in the United States.

C. The Commission Should Take Into Account The Reasonableness Of Foreign Determinations Of Spectrum Scarcity As A Public Interest Factor In Applying The ECO-Sat Test

Teledesic Corporation ("Teledesic") states in its comments that "the number one *de facto* barrier about which the Commission must be vigilant [under the ECO-Sat test] is any unsupported claim of spectrum scarcity . . . ."[85] Motorola and Iridium strongly support this point. While licensing of U.S.-licensed satellite systems by foreign administrations is properly subject to spectrum coordination and availability, foreign administrations must not be permitted to exclude U.S.-licensed systems based upon illusory claims of scarcity of spectrum. Motorola and Iridium agree with Teledesic

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82/ (... continued)
17-19; Comments of TMI Communications and Company, Limited Partnership at 17-18; Columbia Comments at 19 (supporting application of technical requirements regarding ground facilities).

83/ See COMSAT Comments at 36-38; Hughes Comments at 20-22; Loral Comments at 21-22; Columbia Comments at 19 (opposing application of technical requirements regarding satellites); WorldCom Comments at 8-9.

84/ See 47 C.F.R. § 25.112(b) (authorizing waiver of Part 25 license requirements).

85/ Teledesic Comments at 3.

that the Commission should take into account the reasonableness of foreign determinations of spectrum scarcity as a public interest factor in applying the ECO-Sat test.

V. CONCLUSION

For the reasons stated above, the Commission: (1) should adopt the global ECO-Sat test for MSS that is proposed in the DISCO-II NPRM, including the critical mass standard component as refined in the comments of Motorola and Iridium and these reply comments; (2) should apply this test for all earth station applications by non-U.S.-licensed MSS systems, including Inmarsat and its affiliates and successors;

and (3) should resolve various other satellite licensing issues in the manner suggested in the comments of Motorola and Iridium and these reply comments.

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Respectfully submitted,

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I, Maury D. Shenk, hereby certify that the foregoing Reply Comments of Motorola Satellite Communications, Inc. and Iridium LLC were served, via first class mail, postage prepaid, this 16th day of August, 1996, on the following persons:

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